DNA

Maryland v. King, --- U.S. --- (2013)
Decided June 3, 2013

FACTS: King was arrested in April, 2009 in Maryland on felony assault charges. As required under state law, a DNA sample was collected from him during booking. A few months later, the information was uploaded to the state DNA database and on August 4, his DNA profile matched him to evidence collected in a 2003 open rape case. He was indicted and arrested. With a search warrant, a second sample was collected and double-checked, it again matched. King moved for suppression, arguing that the collection of DNA during booking was a violation of the Fourth Amendment. The trial court denied the suppression.

King was convicted and appealed. The Maryland Court of Appeals agreed, finding the collection of DNA using a buccal (cheek) swab to be a violation. The government requested certiorari and the U.S. Supreme Court granted review.

FACTS: May DNA be collected by a buccal swab during booking, and used for identification purposes?

HOLDING: Yes

DISCUSSION: The Court noted that federal and state courts throughout the country "have reached differing conclusions as to whether the Fourth Amendment prohibits the collection and analysis of a DNA sample from persons arrested, but not yet convicted, on felony charges." The Court started by discussion the "advent of DNA technology," describing it as "one of the most significant scientific advancements of our era." In the criminal justice system, since the first positive ID made in 1986, DNA has been acknowledged to have the "unparalleled ability both to exonerate the wrongly convicted and to identify the guilty."

The Court extensively described the process for using DNA as a positive identifier. It further noted that Maryland law authorizes the collection of DNA from individuals charged with crimes of violence, which are further described in another Maryland statute. The sample may not be processed and placed in a database until arraignment, at which point a judge determines there is probable cause to bind them over for trial. If that does not occur, or if they are not convicted, the samples are to be destroyed. The DNA may only be used for identification purposes. Further, the process used is not intrusive at all. The match was done by the FBI's Combined DNA Index System (CODIS).

The Court agreed, however, that a buccal swab is a search under the Fourth Amendment.[1] However, the taking of the sample, which requires "but a light touch on

[1] Schmerber v. California, 384 U.S. 757 (1966).

the inside of the cheek," is a negligible intrusion. In other words, although a search, there are situations that "may render a warrantless search or seizure reasonable."[2] In Maryland, the collection is done when the subject is already in custody for a serious offense supported by probable cause. The Court agreed that the purposes for the collection include "the need for law enforcement officers in a safe and accurate way to process and identify the persons and possessions they must take into custody." The Court agreed that certain "administrative steps" are incident to arrest.[3] The doctrine of search incident to arrest "has been regarded as settled from its first enunciation, and has remained virtually unchallenged;"[4] the "fact of a lawful arrest, standing alone, authorizes a search." [5] The "routine administrative procedure[s] at a police station house incident to booking and jailing the suspect" have a different origin.[6] In every case, it is critical to properly identify the individual, who may in fact have a reason to disguise or conceal their actual identity by carrying false identification. The Court noted that individuals arrested for minor offenses may in fact be "the most devious and dangerous criminals," mentioning that, for example, Timothy McVeigh (Oklahoma City bombing) was originally stopped for driving without a license plate. The Court noted that "the only difference between DNA analysis and the accepted use of fingerprint databases is the unparalleled accuracy DNA provides." The court found it little different "than matching an arrestee's face to a wanted poster of a previously unidentified suspects; or matching tattoos to known gang symbols to reveal a criminal affiliation; or matching the arrestee's fingerprints to those recovered from a crime scene." The Court found it little different than checking other data, such as photos, Social Security number, etc., which "are checked as a routine matter to produce a more comprehensive record of the suspect's complete identity." Further, identifying an individual is critical to the safety of staff and other inmates, and "DNA identification can provide untainted information" about the subject, equating to the visual inspection for possible gang tattoos. In addition, since the government "has a substantial interest in ensuring that persons accused of crimes are available for trial,"[7] it is critical to know if "a person who is arrested for one offense" "has yet to answer for some past crime" – providing a strong motivation to flee. It also provides valuable information on potential pretrial release. The Court noted that "pretrial release of a person charged with a dangerous crime is a most serious responsibility." Finally, the Court noted, such identifications may "have the salutary effect of freeing a person wrongfully imprisoned for the same offense."

The Court agreed that there was little reason to question the legitimate interest in the government "in knowing for an absolute certainty the identity of the person arrested, in knowing whether he is wanted elsewhere, and in ensuring his identification in the event he flees prosecution." The Court considered the collection and use of DNA "is no more than an extension of methods of identification long used in dealing with persons under

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[2] Illinois v. McArthur, 531 U.S. 326 (2001).
[3] Gerstein v. Pugh, 420 U.S. 103 (1975).
[4] U.S. v. Robinson, 414 U.S. 218 (1973).
[5] Michigan v. DeFillippo, 442 U.S. 31 (1979).
[6] Illinois v. Lafayette, 462 U.S. 640 (1983).
[7] Bell v. Wolfish, 441 U.S. 520 (1979).

arrest."[8] The search involved in minimal, and further, the expectation of privacy for a detainee is diminished, although not extinguished completely.

The Court reversed the decision of the Maryland Court of Appeals, thereby reinstating King's conviction.

Full Text of Opinion: http://www.supremecourt.gov/opinions/12pdf/12-207_d18e.pdf

[8] U.S. v. Kelly, 55 F.2d 67 (2nd Cir. 1932).